IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER NO. 804 of 2005

Mrs Rita Vasudev Warke .. Appellant

vs

Mr Barku Fakira Shinde & ors .. Respondents

Mr. R.S.Apte with Mr.A.A.Garge for Appellant
Mr.R.V.More for Respondent nos. 3 and 4.

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CORAM : B.H.MARLAPALLE, J

DATE: 19th September, 2005

P.C.

1. Heard Mr.Apte with Mr. Garge learned counsel for the appellant-plaintiff and Mr.More for the respondent nos. 3 and 4.

2. In S.C.Suit No.340 of 2004 the plaintiff approached the trial Court for a decree for

specific performance of the contract and for cancellation of the sale deed in favour of the defendant nos. 3 and 4 of the suit property namely agricultural land admeasuring 1 hectare 25 R of Gat No.138/2/2 of village Mhasrul taluka and district Nasik. There is no dispute that the said land was owned by the defendant no.1 who had agreed to sell it to the plaintiff as per the agreement dated 2nd May, 1998. The said agreement was notarised at Nasik and the plaintiff claimed to have paid an amount of Rs.6,32,812/- out of the agreed sum of Rs.12,65,625/-. As per the plaintiff, the defendant no.2 was the power of attorney holder of the defendant no.1 and the suit land fell within the purview of the rehabilitation zone and therefore, the defendant nos.1 and 2 were required to obtain permission from the competent authority for transfer of the suit land. The sale deed was to be signed only after such permission was obtained. The plaintiff alleges that the defendant nos. 1 and 2 sold the land to the defendant nos. 3 and 4 vide agreement for sale dated 9th November, 2001 for the total consideration of Rs.16,50,000/- and subsequently the said transaction was completed vide sale deed dated 25th September, 2002 which has

been registered.

3. After hearing the respective parties and on perusal of the documents placed on record, the learned Judge of the trial Court noted that the plaintiff had executed the agreement of sale on 2nd Octber, 2000 in favour of the defendant nos. 3 to 5. The plaintiff had also executed the power of attorney in favour of the defendant nos. 3 to 5. On 14th September, 2002 the plaintiff had also been the consenting party to the power of attorney dated 14th September, 2002 signed by the defendant no. 1 in favour of the defendant nos. 3 to 5 and she contended that her signature on the said document was forcibly obtained. The trial Court noted that the document was notarised and it had the plaintiff's photograph as well. The sale deed was subsequently registered and therefore there was no prima facie case made out by the plaintiff in support of her case that her consent was obtained by fraud or by misrepresentation to complete the transaction of the defendant nos. 1 and 2 on one hand and the defendant nos.3 and 5 on the other. These observations made by the trial Court cannot be regarded as patently erroneous and therefore the

order passed by the trial Court rejecting the application for injunction does not call for any interference. At the same time, the suit remains pending and in case the defendant nos. 3 to 5 desire to create any third party interest in respect of the suit land or construction that they proposed to carry out on the said land, such third party must be given intimation regarding pendency of the suit.

4. In the premises, appeal is dismissed in limine and it is directed that the defendant nos. 3 to 5 shall file an undertaking before the trial Court that the third parties shall be given intimation regarding the pendency of the suit as and when such third party interest are likely to be created. The undertaking to be furnished within a period of four weeks.

(B.H.Marlapalle, J)